vision of Article V. Furthermore, calling a constitutional convention has always been regarded as a type of fundamental legislation and since 1850, with comparatively few exceptions, has been submitted to the people, *Bennett v. Jackson*, 186 Ind. 533, 116 N.E. 921 (1917); 27 Yale L. Jour. 132 (1917), and in the absence of contrary provision, it would seem that policy should prevail.

JOSEPH T. ZOLINE

Libel and Slander—Intra-corporate Communication as Privileged Publication or as No Publication—[Federal].—The assistant general manager of the defendant corporation communicated to defendant's general manager and superintendent an alleged libel. Defendant demurred to the complaint asserting there had been no publication. The district court sustained the demurrer. *Held*, judgment affirmed, the court pointing out that lack of publication foreclosed any issue of privilege and malice. *Briggs v. Atlantic Coast R. Co.*, 66 F. (2d) 87 (C.C.A. 5th 1933).

Dictation by an individual to a stenographer and typing by the stenographer is now generally considered to be publication of a libel. *Nelson v. Whittier*, 272 Fed. 135 (1921); *Ferdon v. Dickens*, 161 Ala. 181, 49 So. 888 (1909); *Gambill v. Schooley*, 93 Md. 48, 48 Atl. 730, 52 L.R.A. 87 (1909); *Ostrowe v. Lee*, 256 N.Y. 36, 175 N.E. 505 (1931). But dictation by a corporate employee to a fellow-employee is not a publication, the process of writing the letter being but "one act" of the corporation. *Cartwright-Caps Co. v. Fischel & Kaufman*, 113 Miss. 359, 74 So. 278 (1917); *Owen v. Ogilvie*, 32 App. Div. 465, 53 N.Y.S. 1033 (1898); *Wells v. Belstrat Hotel Corp.*, 212 App. Div. 366, 208 N.Y.S. 625 (1925); *Freeman v. Dayton Scale Co.*, 159 Tenn. 413, 19 S.W. (2d) 255 (1929); *Chalkey v. Great Atlantic Coast Line R. Co.*, 150 Va. 301, 143 S.E. 631 (1928); *contra*, *Berry v. City of N.Y. Ins. Co.*, 210 Ala. 369, 98 So. 290 (1928); *Edmondson v. Birch & Co.*, [1907] 1 K.B. 371; *Osborn v. Thomas Boulter & Son*, [1930] 2 K.B. 226. When the communication is not a part of "one act," as when the letter is sent from one officer of the corporation to another, the dictum in the New York case of *Owen v. Ogilvie*, 32 App. Div. 465, 53 N.Y.S. 1033 (1898) that such *is* publication, may be followed as was done by the highest court of New York. *Kennedy v. James Butler Inc.*, 245 N.Y. 204, 156 N.E. 666 (1927). Other cases hold that even here there is no publication. *Central of Ga. R. Co. v. Jones*, 18 Ga. App. 414, 89 S.E. 426 (1916); *George v. Ga. Power Co.*, 43 Ga. App. 596, 159 S.E. 756 (1931); *Prins v. Holland-N.A. Mortgage Co.*, 117 Wash. 206, 181 Pac. 680, 5 A.L.R. 451 (1919). These cases *contra* to the *Kennedy* case apply the more consistent theory and deny that any communication between corporate employees constitutes a publication, whether considered "one act" or not, for since a corporation can act only through agents, no third party is involved, it being analogous to a person uttering a libel to himself. See *Prins v. Holland-N.A. Mortgage Co.*, 107 Wash. 206, 181 Pa. 680, 5 A.L.R. 451 (1919). Such a theory supports the present case. But upon this corporate fiction notion, the unsatisfactory but logical result might well be reached that as against the corporate employee sued as an individual there might be a publication, but not as against the corporation as defendant.

A more satisfactory and equally consistent theory is that of considering all intra-corporate communications, whether deemed to be "one act" or not, as published, thus introducing the privilege issue. The principle has been applied in the telegraph company cases. *Western U. Tel. Co. v. Brown*, 294 Fed. 167 (C.C.A. 8th 1923); *Peterson v.*

Western U. Tel. Co., 65 Minn. 18, 67 N.W. 646, 33 L.R.A. 302 (1896); *Paton v. Great Northwestern Tel. Co. of Canada*, 141 Minn. 430, 170 N.W. 511 (1919); *Flynn v. Western U. Tel. Co.*, 199 Wis. 124, 225 N.W. 742, 63 A.L.R. 113 (1929); *Archambault v. Great N.W. Tel. Co.*, Montreal L. Rep., 4 Q.B. 122; see 5 Wis. L. Rev. 297 (1929); 43 Harv. L. Rev. 144 (1929). The recent English case of *Osborn v. Boulter & Son*, [1930] 2 K.B. 226 adopted this attitude though it was unnecessary to decide whether the publication was of libel or slander as the defamation was held privileged.

RICHARD LAWRENCE LINDLAND

Searches and Seizures—Right of Owner of Equity of Redemption to Disclosures—[Illinois].—In a suit for foreclosure by the trustee under a deed of trust given to secure a bond issue, the owner of the equity of redemption sought by answer and cross bill to obtain a list of the names of the bondholders. This is an appeal from an order adjudging the trustee guilty of contempt and committing him to jail for noncompliance with a decree ordering him to produce the list sought. *Held*, that the decree violated his constitutional protection against unreasonable search and seizure. (Ill. Const. Art. 2, Par. 6.) *Firebaugh v. Traff*, 353 Ill. 82, 186 N.E. 526 (1933).

Though the court in reaching its result may have expanded somewhat the traditional construction placed upon the "searches and seizures" clause (see J. E. Wood, Scope of the Constitutional Immunity against Searches and Seizures, 34 W.Va. L. Quar. 1, 137 (1927), the interest in the case lies not in its specific facts or decision but rather in the bearing it may have on the similar problem arising when bondholders or creditors seek the names of others similarly situated.

To preserve properly their interest and to secure unity of action, unorganized bondholders and creditors require information enabling them to contact with others in like positions. 15 Fletcher, Corporations (1932), § 7302; Dewing, Financial Policy of Corporations (1926), 901–1133; note, 42 Yale L. Jour. 984 (1933).

Though there is no clear precedent for a decree ordering the production of the bondholder list, *Bergelt v. Roberts*, 144 Misc. 832, 258 N.Y.S. 905 (1932); *Marx v. Merchants' Nat. Prop.*, 265 N.Y.S. 163 (1933), two analogies suggest the innovation. See note, 32 Col. L. Rev. 1435 (1932). *First*, the unquestioned but carefully qualified right of the stockholders to inspect the books, *Varney v. Baker*, 194 Mass. 239, 80 N.E. 524 (1907); *Henry v. Babcock & Wilson Co.*, 196 N.Y. 302, 89 N.E. 942 (1909); 5 Fletcher, Corporations (1931), § 2213, has for certain purposes extended to include access to plans and names of other stockholders. *Chable v. Nicaragua Canal Constr. Co.*, 59 Fed. 846 (1894); *Otis-Hidden Co. v. Scheirich*, 187 Ky. 423, 21 S.W. (2d) 191, 22 A.L.R. 19 (1920); *Cameron v. Havemeyer*, 12 N.Y.S. 126, 25 Abb. 438 (1890); *Mawhinney v. Converse*, 102 N.Y.S. 297, 117 App. Div. 255, affd. 189 N.Y. 501, 81 N.E. 1169 (1907). The drawing together of the economic positions of the stockholders and bondholders, Berle and Means, Modern Corporation and Private Property (1932), 279, may well result in a more common legal position. *Second*, the relation between bondholder and corporate obligor may be assimilated to that of trustee and cestui. This analogy was accepted in *Bergelt v. Roberts*, 144 Misc. 832, 258 N.Y.S. 905 (1932), noted in 46 Harv. L. Rev. 713 (1933) and rejected in the later case of *Marx v. Merchants' Nat. Prop.*, 265 N.Y.S. 163 (1933). See also *In re International Match Corp.*, 59 F. (2d) 1012 (D. C., S. D., N.Y. 1932) where a similar problem was considered under the National Bankruptcy Act, §§ 21a, 39, 11 U.S.C.A., §§ 44a, 67.

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